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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1963

No. 519

MARVIN SHERWIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

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Petitioner respectfully moves for leave to file the Petition for Rehearing forwarded to this Court on February 4, 1964. The petition was not filed on January 31, 1964 because of counsel inadvertently mistaking the date of the Order of the Circuit Court to the District Court for the date of the Order of the Supreme Court.

We believe the Petition for Rehearing is meritorious and the decision in *Mann v. United States*, 319 Fed. 2d 404, creates a direct conflict on the important sub-

ject of criminal intent in income tax cases in the Courts of Appeals which should be resolved by this Court. In addition, this Court has just granted review in *United States v. Barrett*, No. 606, ruling below (C.A. 5, 322 Fed. 2d 292), a case dealing with instructions on presumptions in criminal tax cases.

As more fully set forth in the Petition for Rehearing, the question in the instant case is the propriety of presuming intent from the filing of an incorrect income tax return. Although this petition for rehearing is filed after the expiration of the time prescribed in Rule 58, the Court clearly has power in its discretion to entertain the petition.

Roberts Sash & Door Co. v. United States, 282 U.S. 829;

Duquesne Steel Foundry Co. v. Burnet, 282 U.S. 830;

Douglas v. Willcuts, 295 U.S. 722;

Silesian-American Corp. v. Clark, 332 U.S. 469, 474;

R. Simpson & Company v. C. I. R., 321 U.S. 225, 229.

Dated, San Francisco, California,
February 6, 1964.

RICHARD H. FOSTER,
Counsel for Petitioner.